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7 Attorneys for Defendant  
AMERICREDIT FINANCIAL  
8 SERVICES, INC. erroneously  
sued as "AMERICREDIT"

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11

12 JOSHUA JACOBSON AND EDEN  
13 VILLARREAL

14 Plaintiffs

15 vs.

16 AMERICREDIT CORPORATION,  
17 NATIONAL AUTO RECOVERY  
BUREAU AND TONY DOE

18 Defendants.  
19  
20  
21  
22

Case No.: C07-2694 JCS

**DECLARATION OF ERIC J.  
TROUTMAN IN SUPPORT OF  
AMERICREDIT'S MOTION TO  
STRIKE AND MOTION TO  
DISMISS FOR FAILURE TO  
STATE A CLAIM UPON WHICH  
RELIEF CAN BE GRANTED**

Date: October 5, 2007

Time: 9:30 a.m.

Dept: A

Judge: Hon. Joseph C. Spero

Complaint: May 21, 2007

Trial date: None set

23 I, Eric J. Troutman, declare as follows:

24 1. I am an attorney to practice law in the state of California and am admitted  
25 to practice before the United States District Court for the Northern District of  
26 California. I am an associate with the law firm of Severson & Werson, APC,  
27 attorneys of record for Defendant AmeriCredit Financial Services, Inc. in this  
28 action. I make this declaration in support of AmeriCredit's Motion to Strike and

1 Motion to Dismiss, which are concurrently filed. The following facts are within my  
2 own personal knowledge and if called as a witness I would, and could, testify  
3 competently thereto.

4 2. For the Court's convenience and ease in addressing AmeriCredit's Motion  
5 to Strike portions of the First Amended Complaint, and AmeriCredit's Motion to  
6 Dismiss, my office has prepared a red-lined comparison of the allegations of the  
7 Complaint and the First Amended Complaint filed by Plaintiffs herein. Such  
8 comparison is attached hereto as Exhibit "A." I have reviewed the comparison and  
9 believe that it accurately compares the two pleadings.

10 3. As a guide to interpreting the comparison: Language which has a line  
11 through it is language which appeared in the Original Complaint but does not  
12 appear in the FAC; Language which is double underlined is language which  
13 appears in the FAC but which did not appear in the Original Complaint.

14 I declare under penalty of perjury under the laws of the United States of  
15 America and the State of California, that the forgoing is true and correct.

16  
17 DATED: August 24, 2007 at Irvine, California

18  
19   
ERIC J. TROUTMAN

# **EXHIBIT “A”**

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Joshua Jacobson and Eden Villarreal

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**JOSHUA JACOBSON AND EDEN  
VILLARREAL,**

**PLAINTIFF PLAINTIFFS,**

v.

**AMERICREDIT, NATIONAL AUTO  
RECOVERY BUREAU, AND TONY  
DOE,**

**DEFENDANTS.**

**Case No.:                     C 07-02694**  
**(JCS)**

**FIRST AMENDED COMPLAINT FOR**  
**DAMAGES**

**JURY TRIAL DEMANDED**

INTRODUCTION

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA"), to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect

1 consumers against debt collection abuses.<sup>1</sup>

2 2. The California legislature has determined that the banking and credit system  
3 and grantors of credit to consumers are dependent upon the collection of just  
4 and owing debts and that unfair or deceptive collection practices undermine  
5 the public confidence that is essential to the continued functioning of the  
6 banking and credit system and sound extensions of credit to consumers. The  
7 Legislature has further determined that there is a need to ensure that debt  
8 collectors exercise this responsibility with fairness, honesty and due regard for  
9 the debtor's rights and that debt collectors must be prohibited from engaging  
10 in unfair or deceptive acts or practices.<sup>2</sup>

11 3. JOSHUA JACOBSON, ("JOSHUA") and EDEN VILLARREAL ("EDEN"),  
12 by Plaintiffs' attorneys, brings this action to challenge the actions of  
13 AMERICREDIT ("AMERICREDIT"), and NATIONAL AUTO RECOVERY  
14 BUREAU, ("NATIONAL") ~~and TONY DOE ("TONY")~~, with regard to attempts by  
15 NATIONAL, and ~~TONY~~,

16 AMERICREDIT, all debt collectors, to unlawfully and abusively collect a  
17 debt allegedly owed by JOSHUA, and this conduct caused Plaintiffs damage.

18 ~~4. For the purposes of this Verified Complaint for Damages, unless otherwise~~  
19 ~~indicated, "Defendant" includes all agents, employees, officers, members,~~  
20 ~~directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,~~  
21 ~~representatives and insurers of the defendants named in this caption.~~

## 22 JURISDICTION AND VENUE

23 ~~5.4.~~ Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331 and 15 U.S.C. §  
24 1692k(d), and 28 U.S.C. § 1367 for supplemental state law claims.

25 #

26 #

27 <sup>1</sup> 15 U.S.C. §§ 1692(a)-(e)

28 <sup>2</sup> Cal. Civ. Code §§ 1788.1(a)-(b)

1 ~~6.5.~~ This action arises out of Defendants' violations of the ~~following: the~~ Rosenthal Fair  
2 Debt

3 Collection Practices Act, California Civil Code §§ 1788- 1788.32 (RFDCPA),  
4 the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. and  
5 California Common Law.

6 ~~6.~~ Because Defendants do business within the State of California, personal  
7 jurisdiction is established.

8 ~~7. Because Defendants do business within the State of California, personal~~  
9 ~~jurisdiction is established.~~ 8. Venue is proper pursuant to 28 U.S.C. § 1391.

10 <sup>1</sup> 15 U.S.C. §§ 1692(a)-(e)

11 <sup>2</sup> Cal. Civ. Code §§ 1788.1(a)-(b)

## 12 PARTIES

13 ~~9.8.~~ JOSHUA is a natural person who resides in the City of San Francisco, County  
14 of San Francisco, State of California, and is obligated or allegedly obligated to  
15 pay a debt, and is a "consumer" as that term is defined by 15 U.S.C. §  
16 1692a(3).

17 ~~10.9.~~ EDEN is a natural person who resides in the City of San Francisco, County of  
18 San Francisco, State of California, and is JOSHUA's adult daughter.

19 ~~11.10.~~ JOSHUA is a natural person from whom a debt collector sought to collect a  
20 consumer debt which was due and owing or alleged to be due and owing from  
21 JOSHUA, and is a "debtor" as that term is defined by California Civil Code §  
22 1788.2(h).

23 ~~12.11.~~ Plaintiffs are informed and believe, and thereon allege, that AMERICREDIT  
24 is a company operating from the City of Fort Worth, County of Tarrant, State  
25 of Texas.

26 ~~13.12.~~ Plaintiffs are informed and believe, and thereon allege, that NATIONAL is a  
27 company operating from the City of San Francisco, County of San Francisco,  
28 State of California.

~~14.13.~~ Plaintiffs are informed and believe, and thereon allege, that TONY is an agent

agent of NATIONAL, and operates from the City of San Francisco, County of San Francisco, State of California.

~~15-14.~~ Plaintiffs are informed and believe, and thereon allege, that NATIONAL ~~is a~~ and person TONY are persons who use an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and ~~is~~ are therefore "debt collectors" as that term is defined by 15 U.S.C. § 1692a(6).

15. Plaintiff are informed and believe, and thereon allege, that AMERICREDIT, in the ordinary course of business, regularly, on behalf of himself or herself or others, engages in debt collection as that term is defined by California Civil Code § 1788.2(b), and is therefore a "debt collector" as that term is defined by California Civil Code § 1788.2(c).

16. Plaintiffs are informed and believe, and thereon allege, that neither NATIONAL, TONY, nor TONY AMERICREDIT is an attorney or counselor at law and are persons who, in the ordinary course of business, regularly, on behalf of themselves or others, engage in debt collection as that term is defined by California Civil Code § 1788.2(b), and ~~is~~ all are therefore a "debt collectors" as that term is defined by California Civil Code § 1788.2(c).

17. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a "consumer debt" and "consumer credit" as those terms are defined by Cal. Civ. Code § 1788.2(f).

#### FACTUAL ALLEGATIONS

18. At all times relevant Plaintiffs were individuals residing within the State of

1 California.

2 19. Plaintiffs are informed and believe, and thereon allege, that at all times  
3 relevant Defendants conducted business in the State of California.

4 20. Sometime before June 9, 2006, JOSHUA allegedly incurred financial  
5 obligations to AMERICREDIT that were money, property, or their equivalent,  
6 which is due or owing, or alleged to be due or owing, from a natural person to  
7 another person and were therefore "debt(s)" as that term is defined by  
8 California Civil Code §1788.2(d), and a "consumer debt" as that term is  
9 defined by California Civil Code § 1788.2(f).

10  
11  
12 #  
13 21. These financial obligations were primarily for personal, family or household  
14 purposes and are therefore "debt(s)" as that term is defined by 15 U.S.C.  
15 § 1692a(5).

16 22. Sometime thereafter, but before June 9, 2006, JOSHUA allegedly fell behind ~~in the~~  
17 in the payments allegedly owed on the alleged debt. JOSHUA currently takes  
18 no position as to whether or not this alleged debt was actually owed.

19 23. Plaintiffs are informed and believe, and thereon allege, that subsequently, but  
20 before June 9, 2006, ~~the alleged debt was~~ AMERICREDIT assigned, placed, or otherwise  
21 transferred; the alleged debt to NATIONAL, for collection and repossession.

22 24. Plaintiffs are informed and believe, and thereon allege, that on or about June  
23 9, 2006 through June 12, 2007, TONY was an employee and agent of  
24 NATIONAL.

25 25. Plaintiffs are informed and believe, and thereon allege, that on or about June  
26 9, 2006 TONY and NATIONAL were acting, jointly, as agents and  
27 representatives of AMERICREDIT.

28 26. On or about June 9, 2006, TONY arrived at JOSHUA's house and rang the

doorbell. When JOSHUA answered, TONY stated, "I'm from the bank and I am here about the Jeep. I need to take it because you're behind in your payments."

~~25-27.~~ This statement represents a false, deceptive, or misleading means used in connection with the collection of the alleged debt because TONY was not from any bank. As such, TONY violated 15 U.S.C. §§ 1692e and 1692e(10). Because TONY violated 15 U.S.C. §§ 1692e and 1692e(10), TONY also violated Cal. Civ. Code § 1788.17.

~~26-28.~~ JOSHUA then offered to pay the late balance in full if TONY would allow JOSHUA to go to his bank.

//

//

~~27-29.~~ TONY agreed to allow JOSHUA to go to the bank on the condition that JOSHUA and TONY drive JOSHUA to the bank in

TONY's tow truck. JOSHUA agreed. This was an attempt by TONY and

~~28.-~~ NATIONAL to collect a debt for AMERICREDIT.

~~30.~~ Subsequently, JOSHUA and TONY arrived at the bank, and JOSHUA

withdrew \$500.00 from the "ATM." ~~which is~~

~~31.~~ This \$500.00 in cash was tendered to TONY and NATIONAL for the purpose of paying part of the debt allegedly owed AMERICREDIT.

~~the limit on such withdrawals, and wrote TONY~~ ~~32.~~ JOSHUA then immediately tendered to TONY and NATIONAL a check for

the remaining balance of \$1,048.00.

~~29.~~ ~~JOHSUA gave the money~~ ~~33.~~ When JOSHUA tendered the cash and check to TONY, who TONY and

NATIONAL accepted it, payment.

~~34.~~ TONY then wrote JOSHUA a receipt, in the name of TONY and NATIONAL.

~~35.~~ TONY then stated that JOSHUA's late balance was 's debt that was previously in arrears was

now paid in full and TONY, NATIONAL, and AMERICREDIT now

1 acknowledged that the debt in question was no longer in arrears.

2 36. TONY then drove JOSHUA back to JOSHUA's house.

3 #

4 ~~30-37.~~ As a result of TONY'S representations, JOSHUA reasonably believed he was  
5 now current on his monthly vehicle payments.

6 ~~31-38.~~ A few days later, on or about June 12, 2006, TONY returned to JOSHUA's  
7 home.

8 39. On that date and time, TONY told Plaintiff that he could not accept the money ~~JOSHUA~~  
9 ~~gave~~

10 JOSHUA gave TONY on June 9, 2006-2006 even though he had already done so.

11 TONY stated that AMERICREDIT would not accept JOSHUA's payment  
12 through TONY because TONY is a "third party." TONY then returned  
13 JOSHUA's money.

14 //

15 //

16 //

17 40. By refusing payment, AMERICREDIT was apparently attempting to create a  
18 default so that AMERICREDIT could charge fees, costs, and other expenses.

19 This action by AMERICREDIT violated Cal. Civ. Code § 1788.17 as it  
20 incorporates by reference 15 U.S.C. §§ 1692e and e(10) and 15 U.S.C. §§  
21 1692f and f(1).

22 ~~TONY then returned JOSHUA's money.~~

23 ~~32-41.~~ During this same conversation, TONY stated that if JOSHUA paid the alleged  
24 debt by June 16, 2006, there would be no need for TONY to repossess the ~~automobile~~  
25 vehicle and the vehicle would not be repossessed.

26 ~~33-42.~~ This statement represents an attempt by TONY and NATIONAL to collect the  
27 alleged debt, and a false, deceptive, or misleading means used in connection  
28 with the collection of the alleged debt because, as will be described below, TONY's  
TONY, NATIONAL and AMERICREDIT continued the repossession

1 attempts ~~continued~~ despite JOSHUA's payment in full before June 16, 2006. As such

2 Consequently, TONY and NATIONAL violated 15 U.S.C. §§ 1692e and 1692

3 1692e(10) and AMERICREDIT violated Cal. Civ. Code § 1788.17 as it

4 incorporates by reference 15 U.S.C. § 1692e and e(10). Because TONY and

5 NATIONAL violated 15 U.S.C. §§ 1692e and 1692e(10), TONY and

6 NATIONAL also violated Cal. Civ. Code § 1788.17.

7 34.43. Immediately after TONY left, JOSHUA went to Western Union and wired the

8 full amount of the balance to AMERICREDIT, as TONY and NATIONAL

9 had requested. Plaintiff reasonably believed that such request was at the

10 instructions of AMERICREDIT.

11 35.44. That same day, approximately an hour later, EDEN returned home, driving the after  
12 payment was made, and well

13 before the June 16, 2006 deadline set by TONY, NATIONAL and

14 AMERICREDIT, EDEN was returning home, driving her father's (JOSHUA)

15 Jeep. EDEN was driving with a friend of hers as a passenger in the Jeep. As soon as

16 EDEN entered the driveway, TONY appeared with his tow truck.

17 //

18 36.45. Before EDEN or her friend could exit the Jeep, TONY attached the Jeep to a

19 tow truck and began to raise the back end of the Jeep in an abrupt and violent

20 manner, an action that was a breach of the peace.

21 37. ~~Because these actions by Defendant were not authorized by~~46. TONY, NATIONAL  
22 and AMERICREDIT, TONY had no present right to possess the

23 property at that sought to possess time. As such, TONY and NATIONAL violated 15  
24 U.S.C.

24 § 1692f(6). Because TONY and NATIONAL violated 15 U.S.C. § 1692f(6),

25 TONY and NATIONAL also violated Cal. Civ. Code § 1788.17.

26 #

27 38.47. EDEN was extremely ~~scared~~ frightened by TONY's actions, as she was unaware of

28 who TONY ~~was~~ and NATIONAL were or what business ~~he~~ they had trying to tow

1 the Jeep while she was still inside. In her efforts to escape from the Jeep,  
2 EDEN suffered a contusion and abrasion to her knee, which was a foreseeable  
3 result of TONY and NATIONAL's conduct.

4 ~~39-48.~~ TONY touched or caused EDEN to be touched with the intent to harm EDEN  
5 by causing the truck to contact the vehicle in which EDEN sat.

6 ~~40-49.~~ EDEN did not consent to TONY's conduct.

7 ~~41-50.~~ EDEN was harmed and/or offended by TONY's conduct.

8 ~~42-51.~~ A reasonable person in EDEN's situation would have been harmed and  
9 offended by TONY's touching.

10 ~~43-52.~~ While TONY was in the process of taking JOSHUA's ~~automobile~~vehicle, JOSHUA  
11 exited his house to ~~ask~~determine what TONY ~~was~~, NATIONAL and AMERICREDIT  
12 were doing. Since JOSHUA had paid the balance due, ~~he believed well before the June~~  
13 16,

14 2006 deadline set by TONY, NATIONAL and AMERICREDIT, he knew that  
15 there was no legal reason why TONY, NATIONAL and AMERICREDIT  
16 would be ~~repossessing the automobile~~taking the vehicle.

17 ~~44-53.~~ JOSHUA approached TONY and asked what he was doing. TONY clearly  
18 saw that TONY was attempting to communicate with him but ignored  
19 JOSHUA and refused to answer.

20 //

21 ~~45-54.~~ JOSHUA then telephoned AMERICREDIT on ~~his~~JOSHUA'S cellular telephone.

22 ~~46-55.~~ During the ensuing conversation with AMERICREDIT, AMERICREDIT  
23 confirmed that it received JOSHUA's payment, that JOSHUA was now paid  
24 up as to the alleged debt, and that TONY and NATIONAL had no  
25 authorization or reason to be taking the ~~automobile~~vehicle.

26 ~~47-56.~~ JOSHUA then attempted to tell TONY that AMERICREDIT was on the  
27 telephone and had stated that TONY should not be ~~repossessing~~take the ~~automobile~~vehicle.

28 ~~57.~~ Again, TONY ignored JOSHUA and continued to take the ~~automobile~~vehicle.

1 48-58. JOSHUA then told AMERICREDIT that TONY ~~was~~ and NATIONAL were  
2 continuing to take the ~~automobile~~ vehicle. In response, AMERICREDIT asked to talk  
3 directly with TONY.

4 49-59. JOSHUA then informed TONY that AMERICREDIT wanted to speak with  
5 him. TONY yet again ignored JOSHUA and turned up the radio volume in  
6 the cab of TONY'S tow truck to drown out Plaintiff's ~~voice~~ protesting.

7 #

8 50-60. JOSHUA continued to attempt to have TONY speak to AMERICREDIT on  
9 the telephone, all to no avail.

10 51-61. TONY then finished securing JOSHUA's ~~automobile~~ vehicle to TONY'S tow truck  
11 and  
12 left JOSHUA's driveway with JOSHUA's ~~automobile~~ vehicle.

13 52-62. When TONY left, JOSHUA was still on the telephone with AMERICREDIT.

14 63. JOSHUA told AMERICREDIT that TONY and NATIONAL had left with the ~~automobile~~  
15 ~~and~~ vehicle and asked AMERICREDIT what he should do now to get his ~~automobile~~  
16 ~~back~~ vehicle

17 back that had obviously been taken illegally and due to the malicious conduct  
18 of TONY and NATIONAL and negligence of AMERICREDIT.

19 64. AMERICREDIT acknowledged that TONY and NATIONAL had been hired  
20 by AMERICREDIT but stated that since TONY and NATIONAL had ~~repossessed~~ taken  
21 late the ~~automobile~~ vehicle, JOSHUA must now pay AMERICREDIT repossession fees,  
22 charges and storage charges, and that JOSHUA must fill out paperwork before  
23 JOSHUA could get his vehicle back.

24 65. This statement by AMERICREDIT constituted the use unfair or  
25 unconscionable means to collect or attempt to collect a debt and violated Cal.  
26 Civ. Code § 1788.17 as it incorporates by reference 15 U.S.C. §§ 1692f and  
27 1692f(1).

28 66. Plaintiff is informed and believes, and thereon alleges, that AMERICREDIT

1 was the person that originally instructed NATIONAL and TONY to take the  
 2 vehicle in question. Subsequently, but before the incident described in  
 3 paragraphs 39 - 65, above, AMERICREDIT became aware that the alleged  
 4 debt in question was not in arrears but either instructed NATIONAL and  
 5 TONY to illegally take the vehicle anyway, or negligently did nothing to  
 6 instruct NATIONAL and TONY to refrain from taking JOSHUA's vehicle  
 7 after it had previously instructed NATIONAL and TONY to take said vehicle.

8 54.67. AMERICREDIT had a duty to refrain from allowing JOSHUA's earvehicle to be  
 9 taken after the payments had been satisfied.

10 55.68. AMERICREDIT breached this duty when it allowed TONY to take either negligently  
 11 instructed

12 NATIONAL and TONY to take JOSHUA's vehicle after the payments had  
 13 been satisfied, or when it failed to advise NATIONAL and TONY to  
 14 discontinue the actions that AMERICREDIT had previously placed in motion  
 15 JOSHUA's automobile.  
 16 and after the payments had been satisfied.

17 56. AMERICREDIT's breach caused both JOSHUA harm.

18 69. AMERICREDIT's breach caused both JOSHUA and EDEN harm.

19 57. AMERICREDIT's breach was the substantial factor in causing JOSHUA  
 20 70. AMERICREDIT's breach was the substantial factor in causing JOSHUA and

21 EDEN harm, both actually and proximately.

22 58.71. JOSHUA and EDEN had a right to possess the automobilevehicle at the time of this  
 23 incident.

24 59.72. NATIONAL and TONY intentionally took possession of JOSHUA's automobilevehicle  
 25 for a significant amount of time.

26 60.73. JOSHUA did not consent to this action by TONY.

27 61. JOSHUA was harmed by TONY's actions, and this actions was a substantial

28 factor in causing JOSHUA's harm.62. JOSHUA is informed and believe, and  
thereon allege, that NATIONAL is and TONY

liable for the actions of TONY under respondeat superior and other theories of  
vicarious liability.

//

74. JOSHUA was harmed by NATIONAL and TONY's actions, and these actions  
were a substantial factor in the harm to JOSHUA and EDEN.

75. JOSHUA and EDEN are informed and believe, and thereon allege, that  
NATIONAL is liable for the actions of TONY under respondeat superior and  
other theories of vicarious liability.

76. JOSHUA and EDEN are informed and believe, and thereon allege, that  
AMERICREDIT is liable for the actions of NATIONAL and TONY under

//

respondeat superior and other theories of vicarious liability.

# **CAUSES OF ACTION CLAIMED BY PLAINTIFF**

## **COUNT I**

### **Violations of the Fair Debt Collection Practices Act**

#### **15 U.S.C. § 1692 et seq. as to National**

63.77. Plaintiffs incorporate by reference all of the above paragraphs of this First  
Amended Complaint as though fully stated herein.

64.78. The foregoing acts and omissions constitute numerous and multiple violations  
of the FDCPA, including but not limited to each and every one of the above-  
cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

65.79. As a result of each and every violation of the FDCPA, Plaintiffs are entitled to  
any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in  
an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and,  
reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from  
each ~~Defendant.~~ NATIONAL and TONY.

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## COUNT II

### Violations of the Rosenthal Fair Debt Collection Practices Act

#### Cal. Civ. Code §§ 1788-1788.32 (RFDCPA) as to National and Americredit

~~66-80.~~ Plaintiffs incorporate by reference all of the above paragraphs of this First Amended Complaint as though fully stated herein.

~~67-81.~~ The foregoing acts and omissions constitute numerous and multiple violations of the RFDCPA.

~~68-82.~~ As a result of each and every violation of the RFDCPA, Plaintiffs are entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from ~~each Defendant.~~ National and Americredit.

#

#

## COUNT III

### Battery by ~~Tony~~National

~~69-83.~~ Plaintiffs incorporate by reference all of the above paragraphs of this First Amended Complaint as though fully stated herein.

~~70-84.~~ TONY touched or caused EDEN to be touched with the intent to harm EDEN.

~~71-85.~~ EDEN did not consent to TONY's conduct.

~~72-86.~~ EDEN was harmed and/or offended by TONY's conduct.

~~73-87.~~ A reasonable person in EDEN's situation would have been offended by TONY's touching.

88. NATIONAL is responsible for the actions of its employees and agents.

pursuant to theories of respondeat superior and other theories of vicarious liability and, consequently, is liable to EDEN for the tort of Battery.

//

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//

#### COUNT IV

#### NEGLIGENCE OF AMERICREDIT

74-89. Plaintiffs incorporate by reference all of the above paragraphs of this First Amended Complaint as though fully stated herein.

75-90. AMERICREDIT had a duty to refrain from allowing JOSHUA's car/vehicle to be taken after the payments had been satisfied.

76-91. AMERICREDIT breached this duty when it ~~allowed TONY to take~~ instructed NATIONAL and

JOSHUA's automobile. TONY to take JOSHUA's vehicle, or in the alternate, when AMERICREDIT

~~77. AMERICREDIT's breach caused JOSHUA harm.~~

~~78. AMERICREDIT's breach was the substantial factor in causing JOSHUA~~  
failed to instruct NATIONAL and TONY to discontinue repossession efforts  
after AMERICREDIT instructed NATIONAL and TONY to take vehicle.

92. AMERICREDIT's breach caused JOSHUA and EDEN foreseeable harm.

93. AMERICREDIT's breach was the substantial factor in causing JOSHUA and EDEN harm, both actually and proximately.

#### COUNT V

#### Conversion ~~of TONY~~ by National

~~79- 94.~~ Plaintiffs incorporate by reference all of the above paragraphs of this First Amended Complaint as though fully stated herein.

~~80. JOSHUA had a right to possess his automobile since he had paid the balance due on the automobile.~~

95. At the time the vehicle in question was taken by NATIONAL and TONY,

1 ~~81.~~ TONY intentionally took possession of JOSHUA's automobile for a  
2 JOSHUA had a right to possess the vehicle and neither NATIONAL nor

3 TONY had a present right of possession.

4 96. NATIONAL and TONY intentionally took possession of JOSHUA's vehicle  
5 for a significant period of time.

6 ~~82.-97.~~ JOSHUA did not consent to NATIONAL and TONY's taking of the  
7 automobilevehicle.

8 ~~83-98.~~ As a result of NATIONAL and TONY's taking of the vehicle, JOSHUA was  
9 harmed.

10 ~~84-99.~~ NATIONAL and TONY's actions were a substantial factor in causing  
11 JOSHUA's harm.

12 //

### 13 PRAYER FOR RELIEF

14 **WHEREFORE**, Plaintiff prays that judgment be entered ~~against Defendant for:~~ as follows:

#### 15 Fair Debt Collection Practices Act

- 16 • an award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1) in an  
17 amount to be adduced at trial, from Defendant; NATIONAL;
- 18 • an award of statutory damages of \$1,000.00, pursuant to 15 U.S.C. §  
19 1692k(a)(2)(A); from Defendant NATIONAL;
- 20 • an award of costs of litigation and reasonable attorney's fees, pursuant to  
21 to 15 U.S.C. § 1692k(a)(3), from Defendant NATIONAL.

#### 22 Rosenthal Fair Debt Collection Practices Act

- 23 • an award of actual damages pursuant to California Civil Code §  
24 1788.30(a) in an amount to be adduced at trial, from all Defendants;
- 25 • an award of statutory damages of \$1,000.00, pursuant to Cal. Civ. Code  
26 § 1788.30(b); from all NATIONAL and AMERICREDIT;
- 27 • an award of costs of litigation and reasonable attorney's fees, pursuant to  
28 Cal. Civ. Code § 1788.30(c); from NATIONAL and AMERICREDIT.

### Battery of TONY

- an award of general, special, and actual damages in an amount to be determined at trial; from NATIONAL;
- an award of punitive damages; from NATIONAL;
- an award of pre-judgment interest at the legal rate; from NATIONAL;
- an award of reasonable attorney fees and costs associated with the suit; from NATIONAL; and;
- any other relief this Court deems just and proper- from NATIONAL

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#### **Negligence of ~~AMERICREDIT~~**

- an award of general, special, and actual damages in an amount to be determined at trial; from AMERICREDIT;
- an award of pre-judgment interest at the legal rate; from  
AMERICREDIT;
- an award of reasonable attorney fees and costs associated with the suit; from AMERICREDIT; and;
- any other relief this Court deems just and proper- from AMERICREDIT.

#### **Conversion**

- an award of general, special, and actual damages in an amount to be determined at trial; from NATIONAL;
- an award of punitive damages; from NATIONAL;
- an award of pre judgment interest at the legal rate; from NATIONAL;
- an award of reasonable attorney fees and costs associated with the suit; from NATIONAL; and;
- any other relief this Court deems just and proper- from NATIONAL.

#### **TRIAL BY JURY**

1 85. 100. Pursuant to the seventh amendment to the Constitution of the United States of  
2 America, Plaintiff is entitled to, and demands, a trial by jury.  
3

4 Dated: 5/15/07 \_\_\_\_\_

Respectfully submitted,  
HYDE & SWIGART

7 By: \_\_\_\_\_  
8 Robert L. Hyde, Esq.  
9 Attorney for Plaintiff  
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Document 2	file://C:/Documents and Settings/SBenter/My Documents/Scott H 335mg/jacobson v americredit/first amended complaint final.doc
Rendering set	Standard

<b>Legend:</b>	
<u>Insertion</u>	
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<u>Moved from</u>	
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<b>Statistics:</b>	
	Count
Insertions	318
Deletions	191
Moved from	4
Moved to	4
Style change	0
Format changed	0
Total changes	517

**CERTIFICATE OF SERVICE**

I, the undersigned, declare that I am over the age of 18 and am not a party to this action. I am employed in the City of Irvine and County of Orange, California; my business address is Severson & Werson, 19100 Von Karman, Suite 700, Irvine, CA 92612.

On the date below I served a copy, with all exhibits, of the following document(s):

**DECLARATION OF ERIC J. TROUTMAN IN SUPPORT OF  
AMERICREDIT'S MOTION TO STRIKE AND MOTION TO DISMISS  
FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE  
GRANTED**

on all interested parties in said case addressed as follows:

Robert L. Hyde  
Joshua B. Swigart  
Hyde & Swigart  
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FX: (415) 398-2820

☒ **(BY MAIL)** By placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in Irvine, California in sealed envelopes with postage fully prepaid.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. This declaration is executed in Irvine, California, on August 24, 2007.

  
\_\_\_\_\_  
LORRAINE JOHNSON